

PUBLIC ADMONISHMENT OF JUDGE JAMES L. ROEDER

The Commission on Judicial Performance orders Judge James L. Roeder publicly admonished pursuant to Article VI, section 18(d) of the California Constitution and rules 115 and 116 of the Rules of the Commission on Judicial Performance.

STATEMENT OF FACTS AND REASONS

1. From at least February 2001 to February 2002, Judge Roeder presided over the felony arraignment calendar in Placer County Superior Court. While conducting that calendar and for at least that period of time, Judge Roeder maintained a practice of stating, for the record, that defendants had waived their rights to have a speedy preliminary examination without obtaining the defendants' personal waivers of these rights, as required by law.

Penal Code section 859b provides, in relevant part, that in a felony case, "[b]oth the defendant and the people have a right to have a speedy preliminary examination at the earliest possible time, and unless both waive that right or good cause for a continuance is found . . . the preliminary examination shall be held within 10 court days of the date the defendant is arraigned or pleads, whichever occurs later" Section 859b further provides that "[w]henver the defendant is in custody, the magistrate shall dismiss the complaint if the preliminary examination is set or continued beyond 10 court days" from the time of the defendant's arraignment or plea, whichever occurs later, "unless either of the following occur: (a) The defendant personally waives his or her right to a preliminary examination within 10 court days" [or] (b) [t]he prosecution establishes good cause for a continuance beyond the 10-court day period." In addition and regardless of the defendant's custody status, section 859b provides that "[t]he magistrate shall dismiss the complaint if the preliminary examination is set or continued more than 60 days from the date of the arraignment [or] plea . . . unless the defendant personally waives his or her right to a preliminary examination within 60 days." (Emphases added.)

The following excerpt from arraignment proceedings on January 11, 2002, in the matter of *People v. Brian Allen Costanzo* (case No. 62-26239) illustrates Judge Roeder's practice. The transcript reflects that Mr. Costanzo was in custody on that date and was appearing before Judge Roeder for arraignment on a felony complaint. Prior to calling Mr. Costanzo's matter, Judge Roeder made the following statement to him and the other defendants who were present for arraignment:

Good afternoon. We'll do the arraignments first. When I call your matter, tell the Court if you have hired your own attorney or if you're requesting a Court-appointed attorney. If you're here on a felony, you have the right to a preliminary examination within ten days.

(January 11, 2002 R.T. 2:19-23.)

When Mr. Costanzo's case was called, Judge Roeder asked him whether he was going to retain his own attorney or was requesting that the court appoint an attorney for him. Mr. Costanzo replied he was requesting a court-appointed attorney "for now." (R.T. 2:19-23.) Judge Roeder then stated:

Sure. Give you written notice of your responsibility to reimburse Placer County. Appoint the public defender. Give you a copy of the felony complaint. Waiving formal arraignment, stipulating to advisement of constitutional rights, not guilty pleas will be entered. Set this for a conference Tuesday, January 15, at 8:30 in this courtroom. Waiving time for the preliminary examination both 10 days and 60 days, that will not be scheduled. There is a parole hold. I'll set bail at \$25,000 on this case. Direct [that] he be retained at this facility pending his next appearance.

(R.T. 3:3-12, emphasis added.)

As the foregoing example shows, Judge Roeder stated that Mr. Costanzo was waiving "both [the] 10 days and 60 days" time limits within which to have a preliminary examination, without obtaining his personal waiver of those time limits, as required by Penal Code section 859b.

On February 26, 2002, a preliminary hearing was held in *People v. Costanzo*, at which Mr. Costanzo was held to answer on both felony and misdemeanor charges. On March 12, 2002, Mr. Costanzo was arraigned on an information charging him with felony and misdemeanor offenses. On April 11, 2002, Mr. Costanzo, through his attorney, the Office of the Public Defender, filed a motion to dismiss the information, pursuant to Penal Code section 995, on grounds that he "never personally waived" his right to have a preliminary examination within 10 court days of the January 11, 2002 arraignment proceedings, and therefore he was not lawfully held to answer at the preliminary examination. The motion averred that "at all times relevant herein [Mr. Costanzo had] insisted that the minute order of [the January 11, 2002 arraignment proceeding] inaccurately stated that [he] did waive time." Further, the motion alleged that on January 11, 2002,

... [Mr. Costanzo] was arraigned, but had no opportunity to speak with his counsel during or prior to the arraignment," and that [i]mmediately following the appointment of counsel, [Judge Roeder] ordered that [Mr. Costanzo] waived his Pen[al] C[ode] [section] 859b right to [a] preliminary examination within 10 [court] days. In fact, [Mr. Costanzo] did not waive that right, and was subsequently thwarted in his efforts to vindicate that right based on another court's reliance upon the minute order from [January 11, 2002].

On April 16, 2003, the motion was granted, and the information was dismissed.

2. From at least February 2001 to February 2002, Judge Roeder also regularly conducted an in-custody misdemeanor arraignment calendar. During at least that period of time, he maintained a practice of stating, for the record, that defendants who were appearing before him for arraignment without counsel, and who were requesting appointment of counsel, had waived their right to have a trial within the time limit prescribed by law, without obtaining the defendants' consent. Judge Roeder's practice is illustrated by his conduct on May 24, 2001, during arraignment proceedings in the matter of *People v. Kenneth Santos* (case No. 62-021664). A transcript of the proceedings shows that Mr. Santos appeared in custody and without representation, and that the following colloquy occurred:

THE COURT: Kenneth Santos?

DEFENDANT SANTOS: Here.

THE COURT: Are you going to get your own attorney or requesting one?

DEFENDANT SANTOS: Court appointed.

THE COURT: Giving you written notice of your responsibility to reimburse Placer County, appoint the public defender. Give you a copy of the misdemeanor complaint. Waiving formal arraignment, stipulating to advisement of constitutional rights, not guilty pleas will be entered Waiving time for the misdemeanor jury trial, that will not be scheduled.... [Y]our bail is reduced to \$2,500....

(R.T. 7:14-26, emphasis added.)

Penal Code section 1382(a)(3) provides that “[r]egardless of when the complaint is filed,” a defendant charged with a misdemeanor who is “in custody at the time of arraignment or plea, whichever occurs later,” must be brought to trial within 30 days after arraignment or entry of plea, whichever occurs later.¹ “Article I, section 15, of the California Constitution guarantees criminal defendants the right to a speedy trial. The Legislature by the enactment of section 1382 quantified and implemented this right by establishing specific limits on the time during which a trial must take place.” (*Arreola v. Municipal Court* (1983) 139 Cal. App. 3d 108, 113.)

Penal Code section 1382(a)(3)(A) provides that a defendant who is in custody may waive the 30-day time limit. A defendant may request or consent to the setting of a trial date beyond the 30-day limit. (Pen. Code § 1382(a)(3)(B).) However, “[i]f the defendant is not represented by counsel,” the defendant shall not be deemed under this section to have consented to the date

¹ A defendant who is charged with a misdemeanor “in all other cases” must be brought to trial within 45 calendar days of arraignment or plea, whichever occurs later.

for the defendant's trial unless the court has explained to the defendant his or her rights under this section and the effect of his or her consent.” (Pen. Code § 1382(c), emphasis added.)²

The commission concluded that Judge Roeder abdicated his judicial responsibility to ensure the rights of criminal defendants by his practice at felony and misdemeanor arraignment proceedings of stating, for the record, that defendants had waived their rights to have a preliminary examination or misdemeanor trial within applicable time limits, without properly obtaining the defendants’ consent to a waiver of those rights, in the manner prescribed by law.

In *Oberholzer v. Commission on Judicial Performance* (1999) 20 Cal.4th 371, the California Supreme Court held: “[A] judge who commits legal error which, *in addition*, clearly and convincingly reflects bad faith, bias, abuse of authority, disregard for fundamental rights, intentional disregard of the law, or any purpose other than the faithful discharge of judicial duty is subject to investigation.” (*Oberholzer v. Commission on Judicial Performance, supra*, 20 Cal.4th at p. 398, original italics.) Judge Roeder’s practices at arraignment were clearly legal error and represent a disregard for the statutory and constitutional rights of the defendants.

Judge Roeder, in his response to the commission’s preliminary investigation letter, did not deny having maintained the practices regarding time waivers, as described above, at arraignment proceedings, nor did he state that he was unaware of the requirements of the relevant statutes. He explained that the public defender or private counsel “routinely need time” to open files and investigate cases and that it “was/is” counsel’s practice either not to schedule a preliminary examination or misdemeanor jury trial until the case was “conferenced.” Judge Roeder’s motivation thus appears to have been a desire to accommodate defense counsel, and that this was accomplished at the expense of the statutory rights of defendants to a speedy preliminary examination or trial.

In 1996, the California Supreme Court adopted the commission’s recommendation for public censure of Judge Claude Whitney, holding that the evidence supported the commission’s findings, including that the judge had “abdicated his responsibility to protect the statutory and constitutional rights of defendants in certain respects” during arraignment proceedings. (*In Re*

² In *People v. Byrd* (1991) 233 Cal.App.3d 806, at pp. 810-811, the court observed: “Penal Code section 1382 subdivision (d) [now subdivision “(c)”] mandates that courts inform defendants appearing without representation of their speedy trial rights. This would include informing defendants of their rights pursuant to that entire section.” The court went on to say:

Cases discussing the [trial] court’s failure to explain speedy trial rights are usually in the context of writ proceedings dealing with misdemeanor charges. These cases conclude that the purpose of mandating that the court inform defendants of their speedy trial rights is to “ensure that a defendant without counsel would not waive [the defendant’s] right to a speedy trial through ignorance or oversight” An in propria persona defendant does not waive such rights by failing to object below or by failing to object after counsel is appointed. Further, the record must indicate the court complied with its obligations; “a mere entry in the court’s docket” is not enough to show consent.” (Citations omitted.)

Whitney (1996) 14 Cal.4th 1, 2-3.) The court accepted the commission's finding that Judge Whitney, "as a matter of routine practice in the conduct of the in-custody misdemeanor arraignment calendar," failed to (a) "exercise his judicial discretion to consider release of defendant's on their own recognizance," (b) "consider grants of probation or concurrent sentencing for defendant's pleading guilty or no contest at arraignment," (c) "appoint counsel to assist defendants at the arraignment itself," and, (d) "as required by law, to inform defendants pleading guilty of the negative consequences a conviction could have on a noncitizen with regard to immigration." (*In re Whitney, supra*, 15 Cal.4th at p. 3.) The court also accepted the commission's determination that Judge Whitney's practice of refusing to appoint counsel to assist indigent defendants at the arraignment itself constituted willful misconduct. The court concluded, however, that the remaining practices "constituted, at most, conduct prejudicial to the administration of justice. (*Ibid.*) In mitigation, the court noted that the record showed that Judge Whitney was considered a "diligent and hard-working" judge, and that he had other laudatory traits. (E.g., that he was "generally well regarded among the bench and bar," and that he had "good relationships" with court staff.) In addition, the court found that the judge "ha[d] since improved his conduct and acknowledged he erred in several respect," that the charged misconduct ceased in 1992, and that he "responded honestly and appropriately to the commission's inquiry and disciplinary proceedings." (*Ibid.*)

In 1998, Judge Christopher J. Sheldon received a public admonishment for, among other conduct, leaving the bench during the misdemeanor calendar and for allowing court clerks, in his absence, to enter pleas and execute court documents imposing sentences, to enter continuances agreed to by the attorneys, and to set hearing dates. (*Inquiry Concerning Judge Christopher J. Sheldon, No. 142, Decision and Order of Public Admonishment.*) For some of the pleas entered in his absence, Judge Sheldon allowed the clerks to stamp his signature on the defendants' constitutional rights waiver forms and plea forms, even though the judge had not reviewed the forms, questioned the defendant, or made any of the purported findings. Among the factual findings recited in the commission's Decision and Order were that "[d]efense counsel and the prosecutor liked Judge Sheldon's method of handling the pretrial calendar and believed the pleas entered under the system were valid," and that "[a]pparently, no legal challenge ha[d] been made to a plea entered under Judge Sheldon's procedures." The commission concurred in the Special Masters conclusion that Judge Sheldon's actions did not constitute willful misconduct, instead finding that his conduct constituted conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The commission noted Judge Sheldon's contentions that he "did not think that the procedures violate the law" and that he was "motivated by a desire to make the pretrial calendar run more efficiently, and that he promptly changed his procedure after being counseled by the supervising judge." Nonetheless, the commission concluded that a public admonishment was appropriate discipline because, among other reasons, Judge Sheldon "abandoned his fundamental responsibilities to be on the bench to preside over cases when they are adjudicated in his court" and because his "practice of allowing his courtroom clerks to stamp his signature on [constitutional rights waiver forms] when he never saw the files, created inaccurate and misleading court records."

Judge Roeder's conduct, at a minimum, constituted improper action under article VI, section 18(d) of the California Constitution. The judge's actions, as set forth above, violated canons 1 ("A judge shall uphold the integrity and independence of the judiciary"), 2A ("A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality"), and 3B(2) ("A judge shall be faithful to the law regardless of partisan interests, public clamor, or fear of criticism, and shall maintain professional competence in the law").

The commission concludes that issuance of a public admonishment is required for at least three reasons. First, Judge Roeder abdicated his judicial responsibility to ensure the rights of criminal defendants by his practice at felony and misdemeanor arraignment proceedings of stating, for the record, that defendants had waived their rights to have a preliminary examination or misdemeanor trial within applicable time limits, without properly obtaining the defendants' consent to a waiver of those rights, in the manner prescribed by law. Second, for at least one year, the public observed Judge Roeder state for the record at arraignment that defendants had waived their statutory rights to a speedy preliminary examination or misdemeanor trial without soliciting or obtaining any input from the defendants. Third, this practice created inaccurate and misleading court records, reflecting that defendants had waived their right to have a preliminary examination or misdemeanor trial within applicable time limits when, in fact, the defendants had not consented to the purported waiver.

In mitigation, the commission notes Judge Roeder's statements "acknowledg[ing] the error" and that as of April 2002, he has altered his arraignment practice by asking each defendant if he or she "personally agree[s]" with the time waiver.

Commission members Judge Risë Jones Pichon, Justice Vance W. Raye, Mr. Marshall B. Grossman, Judge Frederick P. Horn, Mr. Michael A. Kahn, Mrs. Crystal Lui, Mrs. Penny Perez, and Ms. Barbara Schraeger voted to impose a public admonishment. Mr. Jose C. Miramontes did not participate in this matter. There are currently two public member vacancies on the commission.

This decision and order shall constitute the

order of public admonishment.

Dated: December 16, 2003

Honorable Risë Jones Pichon
Chairperson

